

WEBINAR WEDNESDAYS



Wednesday, July 22, 2020

BREAKING BAD NEWS: HAVING DIFFICULT CONVERSATIONS WITH VICTIMS OF VIOLENCE

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Distributed by:

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When Having to Give Bad News Feels Like Bad News for Prosecutors

CONSIDERATIONS & TIPS FOR CHALLENGING
CONVERSATIONS

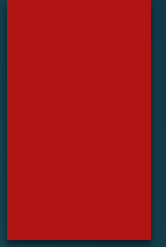


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Getting Started – Interactive Tools

- ▶ Chat
- ▶ Q&A
- ▶ Breakout Rooms
- ▶ Hand Raising Feature:
 - ▶ Click Raise Hand (icon) in the Webinar Controls
 - ▶ The host will be notified that you've raised your hand.
 - ▶ If the host allows you to talk, you may be prompted to unmute yourself. While unmuted, your profile picture and name is displayed to the host and panelists. Only your name is displayed to other attendees.
 - ▶ Click Lower Hand to lower it if needed. This will not mute yourself if you are unmuted.
 - ▶ Windows: You can also use the Alt+Y keyboard shortcut to raise or lower your hand.
 - ▶ Mac: You can also use the Option+Y keyboard shortcut to raise or lower your hand.

Observations in Collaboration/ Empathy for Prosecutors



Court Experience

- ▶ Heavy Caseload
- ▶ Limited Time/ Time-Sensitive
- ▶ Limited Space
- ▶ Lots of Observers
- ▶ Information Dispersed
- ▶ Complex Cases
- ▶ Challenging Victims

Vicarious Stress

- ▶ Experiencing Society's Worst Situations
- ▶ Accumulation Over Time
- ▶ Victim Expectations of Justice and of Their Role
- ▶ External Expectations/Caseload Type
- ▶ Internal expectations
- ▶ Giving One More Piece of Bad News....

POLL:

What kinds of case “bad news”
do you find the hardest to convey?

Challenging Situations

- ▶ Explaining plea bargains or sentencing below expectations
- ▶ Revealing potentially traumatic new case details
- ▶ Reporting that key (or perception of key) evidence is inadmissible
- ▶ Requiring/needing victim testimony
- ▶ Reopening cold cases after many years



Additional Challenges:

- ▶ Confusion over your role as a prosecutor
- ▶ System challenges
- ▶ What innocent until proven guilty really means for the court process
- ▶ Societal concepts of “Justice”
- ▶ Varying individual concepts of “Justice” and accountability. Some want punishment, some want restoration. Most crave validation of the incredible harm suffered – difficult to match by court.
- ▶ Ongoing trauma and potential PTSD (Memory, concentration, heightened reactions)
- ▶ Potential for re-traumatization, finding a balance
- ▶ Suspended “healing” (if and when that happens)
- ▶ Ongoing crisis-management and intervention
- ▶ The unknown is scary for everybody...



Getting Back to YOU: Breakout Groups

What **led you** to be a prosecutor?

What do you **like/love/value** about working with victims of crime and/or loved ones?

What are your **hopes for them** in the process?

What makes giving bad news **so hard**?

(Be prepared to enter some of your answers in the chat when we return to the whole group.)

Interactive Tools – Breakout Rooms

JOINING:

- ▶ The host will to **invite** you to Join. [Click Join](#).
- ▶ You will have access to full controls similar to the meeting.

ASKING FOR HELP:

- ▶ If you click Ask for Help, it will notify the meeting host that you need assistance and they will be asked to join your breakout room.
- ▶ [Click Ask for Help](#) in the meeting controls.
- ▶ Confirm that you would like assistance by clicking [Invite Host](#).

Breakout Groups – 10 minutes:

Take a moment to introduce yourselves...

What **led you** to be a prosecutor?

What do you **like/love/value** about working with victims of crime and/or loved ones?

What are your **hopes for them** in the process?

What makes giving bad news **so hard**?

(Be prepared to enter some of your answers in the chat when we return to the whole group.)

Personal Challenges

- ▶ Caseload (Type and Volume)
- ▶ Ongoing duration of cases and work in general
- ▶ Pressure to Win
- ▶ Self-Criticism
- ▶ Working in Isolation
- ▶ Saturation and Vicarious Trauma/Stress
- ▶ Responding to Emotions and Other Reactions from Survivors or Loved Ones



POLL 2:

Which Types of Reactions
Do You Find Most Challenging?

Anger/rage, crying, fear/anxiety, inquisitiveness, doubting you...?

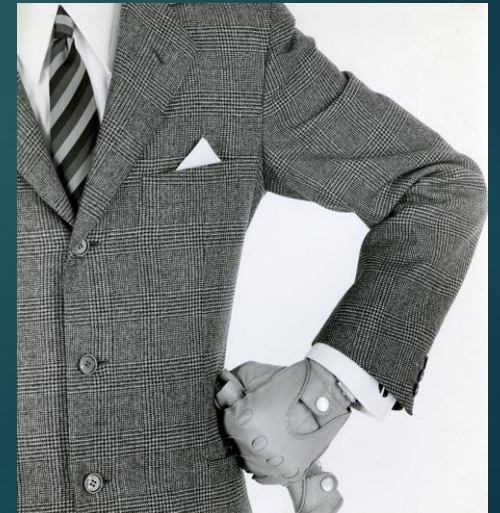
Temptations and Shortcuts When Conveying Potentially “Charged” News

- ▶ Avoidance
- ▶ Short & sweet, logic-based
- ▶ Justifying as part of an imperfect system
- ▶ Pass it off to a victim witness coordinator or other advocate
- ▶ Trying it without being ready, and having it not go well, retreating from the scene



You Have Power to Help

- ▶ VWC as Unintended gatekeepers (positive and negative aspects)
- ▶ Anxiety over what may be lost in translation
- ▶ You as a symbolic, central figure, a face for victims in an impersonal system, about something deeply personal
- ▶ Remember this doctor office example...



Benefits of Handling Bad News Well and With Empathy

- ▶ Can prevent re-traumatization
- ▶ Restore a sense of humanity – compensating for a cold system
- ▶ Can help YOU prevent vicarious trauma, tapping into your own humanity, create the positive moments within the harshness
- ▶ Regardless of case outcome, people have connected with people...



Setting the Stage for Good Outcomes & Building Trust



- ▶ Knowing them before the bad news (Also prevents stress later.)
- ▶ Using names and names of loved ones
- ▶ Referencing things they have already shared, showing you are familiar
- ▶ Asking how they are coping
- ▶ Sharing your role realistically along with your hopes and expectations
- ▶ Seeking their input & voice (Important throughout – for victim rights AND well-being)
- ▶ Identifying their needs, and bridging to supportive services
- ▶ Affirming your close communication with VWC (and meaning it)
- ▶ Providing resources on the court process & what to expect, timeline

Essential Communication Qualities

- ▶ Respect - the Big Umbrella
- ▶ Empathy – the other umbrella
- ▶ Validation of the magnitude
- ▶ Listening and Being/Feeling “Heard”
- ▶ Clarity, empathy for being new to the system, layman’s vernacular
- ▶ Participation/consultation
- ▶ Free of judgment – seek to understand
- ▶ Situational safety
- ▶ Language access (erring well)
- ▶ Knowing/avoiding triggering language – training – affirming to prevent triggers (example: being believed)



Space to Talk:

- ▶ Privacy
- ▶ Chairs
- ▶ Away from perpetrator, the perpetrator's family, defense, etc.
- ▶ Ask if space is Ok, apologize for waits, inconveniences (Respect)
- ▶ Tissues
- ▶ Consider multiple family members
- ▶ Victim Witness Coordinators, advocates in room
- ▶ Is there anyone you would like to have in the room with you for support? (Evidence considerations) - Why could that be helpful?
- ▶ With multiple family, consider talking in increments depending on reactions.



Sitting Vs. Standing

- ▶ Subconscious anxiety when someone stands
- ▶ Perception: Sitting seems like more time was spent
- ▶ Notice when others stand vs. sit when you are telling them something important.

([Swayden KJ](#)¹, [Anderson KK](#), [Connelly LM](#), [Moran JS](#), [McMahon JK](#), [Arnold PM](#), “Effect of Sitting vs. Standing on Perception of Provider Time at Bedside, “ The National Institute of Health.)



Body Language

- ▶ Sitting Vs. Standing
- ▶ Proximity
- ▶ Space from Victim
- ▶ Eye Contact
- ▶ Leaning in
- ▶ Uncrossed Arms
- ▶ Note-taking
- ▶ Avoiding Interruptions



Making Bridges and Showing You Are Hearing

- > Starting with open-ended questions is often mutually-beneficial!
 - “What is your understanding of ...”
 - How the courts work
 - My role as the prosecutor
 - What concerns might be running through your mind approaching the hearing?
- > Affirm and Clarify...
- > Summarize What They Share
- > Respectfully interrupt when timing is right - Ask permission

Preparing to Reveal: Asking Permission & Alerting Cues

- ▶ What does it mean to ask permission?
- ▶ Conveys respect
- ▶ Helps you re-direct appropriately

Example: “Would it be alright to transition now to something I need to share with you? (Breath/pause)

- ▶ **Alerting cues** further prepare the victim or loved one for a shift, and are often essential in giving bad news in a less damaging way:

Examples:

“If it’s ok, I would like to now segue to an update I need to share... (Pause)
We have had a development in the case. I am afraid it was not what we were hoping for...” (Pause)

“I regret I have some news which may be difficult to hear” (Pause)

Notes on Pauses

- ▶ What do you think the purpose of the pauses might have been in the last slide? (Answer in the chat)
- ▶ Long enough to catch a breath, but not **too** long! Anticipation and anxiety escalates if too long.

The Reveal – Pacing & Timing

- ▶ After the very brief processing pause, **state the bad news** as simply and clearly as possible. “He refused to take the plea.” “We are going to trial.” “We are going to need your testimony”
- ▶ **Pause** again for processing and absorption.
- ▶ **Take cues** for proceeding from observing the people or person
- ▶ Note that our own anxiety about revealing bad news can affect our sense of timing
- ▶ If someone is emotional, pauses may seem long to us and short to them
- ▶ **Let them process, before sharing further information**
- ▶ This is HUGE. Why?
- ▶ Remind them you are “with them...”



The Reveal –Emotion-Naming

- ▶ Remind the person processing that you are “with them”
- ▶ Name the emotion:

Examples:

- This must be incredibly hard to hear.
- It's devastating.
- I imagine you're feeling very overwhelmed
- I know this is not what you were expecting to hear (shock)
- It's truly awful, astoundingly tragic

Tips: Careful not to minimize. Pause to allow ongoing processing...



The Power of “I Wish”



- ▶ We experience a myriad of emotions when seeing people in distress- anguish, empathy, helplessness, impatience, ambiguity, concern, sympathy.
- ▶ Sometimes there is a desire to “fix” it and we can’t.
- ▶ I wish statements can convey layers.
- ▶ It all allies you with the victim/loved one.
- ▶ It speaks to your humanity and theirs.

Examples: “I wish... more than I could ever convey, that we had been able to win this case. ...that we could hold him accountable without your testimony ...that the judge had been able to understand ...that this guilty verdict could bring your daughter back...”

Validating

- ▶ Validation helps people feel heard by you.
- ▶ Validations helps people's experience feel recognized.
- ▶ Validation helps people feel less embarrassed or ashamed.
- ▶ Validation can help de-escalate or quell anger.
- ▶ Validation is often more important than interrupting.
- ▶ Validation is typically more effective than defensiveness.
- ▶ Validation followed by open-ended questions can be even-more effective.

Examples of validation: "I can imagine you are furious with me and the judge and everyone involved right now. I don't blame you. It should never have turned out this way. It should never have happened at all. I wish we could have won this case for you, for Delilah, for everyone in society who knows he committed this crime. (Pause) With so much to be angry about, what upsets you the most?"

"It's understandable to feel like you are falling apart and want to scream at us. You've been through one of the most frightening and horrible things a person can go through - and made it our alive. Of course you're impacted by that. Listen, we are still here...Ready to do what we can. Right now I am [What would be the most helpful to you right now in this moment?"

Triggering Words

- ▶ Saying “I totally understand” to a person who is angry or upset is often followed by “NO YOU DON’T UNDERSTAND... You will NEVER know what it’s like to...”

Try: “It sounds like you are saying... It is that what you would like for me to know?”

Or

“Of course you’re upset, furious. Anyone would be in despair after this devastating experience. We are talking about your son...”

(Responses instead use validating, emotion-naming, summarizing...)

Multiple People

- ▶ Assemble everyone.
- ▶ Remember to make eye contact with everyone in the room.
- ▶ Have staff prepared to support family along with you.
- ▶ The reveal may take longer.
- ▶ Varying emotions and responses may take place.
- ▶ Some may have emotional responses, some may shut down, some may want information.
- ▶ There is a tendency to focus on the situation that makes us most comfortable. It is often easier to address the person wanting information than the person shutting down or crying. Notice if you are gravitating towards one person, be inclusive.
- ▶ If conflicts arise, validating comments about both sides may help as may letting them talk it out.
- ▶ It may help to let the family process together – Difference between avoiding and sensing the need.
- ▶ Consider giving extra time to people having an especially hard time.
- ▶ Be prepared with resources for them.



Exercise:

- ▶ Take a moment to think on what you chose at the beginning of the session as the hardest type of bad news to give. Was it...?:
- ▶ Explaining plea bargains or sentencing below expectations
- ▶ Revealing potentially traumatic new case details
- ▶ Reporting that key (or perception of key) evidence is inadmissible
- ▶ Requiring/needing victim testimony
- ▶ Reopening cold cases after many years
- ▶ All of the above!
- ▶ Other (Feel free to share in the chat.)

Exercise Continued...

- ▶ Come up with three “I wish” statements in you might incorporate when giving your piece of news.
- ▶ Convey one of them in the CHAT window.

Closing the Talk While Keeping the Door Open



- Once emotions have been processed, ask permission to share information
- Clearly outline next steps and what to expect
- Check understanding
- Remember: **Our good news may still be bad news for them** - Post trial sentiment
- Seek input and opportunities for victim/loved one engagement and voice
- Know and reiterate victim rights
- Discuss details of next meeting/court date
- **“What questions do you have?”** vs. “Do you have any questions?”
- Address next steps should additional questions arise later.
- Segue to supportive resources
- Repeat hopes and wishes
- Make a supportive goodbye

Video: Additional Perspective

▶ <https://www.youtube.com/watch?v=juKAMbh9J54>

Closing Review of Skills

- ▶ Establish **relationship** before situations arise to give bad news
- ▶ Find a good **place and time** to talk as best you can
- ▶ Notice your seating, **body language**, eye contact
- ▶ **Check in** on their well-being and what they understand before proceeding
- ▶ **Summarize** what they share or understand so they know you have **heard them**
- ▶ **Ask “permission”** to segue to the difficult or bad news, and provide a **warning cue**
- ▶ Notice where emotional **processing pauses** are helpful before conveying details
- ▶ Share **validating or emotion-naming responses** to affirm and de-escalate
- ▶ **Balance** who wants information with who needs emotional support
- ▶ Utilize **“I wish”** statements
- ▶ Provide **opportunities for questions** and thoughtful answers
- ▶ **Bridge** to key resources and ongoing support, or in case of future incidents
- ▶ **Check your own well-being!**

Vicarious Trauma/Stress

- ▶ Vicarious trauma in prosecutors is very real!
- ▶ Contemplate your own self-care plan after giving bad news:
 - In the next few minutes
 - Later that day
 - In your office or system generally

My wish for you!



- ▶ By listening well, and with compassion, I hope you get to (or continue to) **experience first-hand the positive impact you can have** on the well-being of victims and loved ones, even when the “justice” sought was not served to their liking.
- ▶ That you explore ways to consider your own well-being
- ▶ Remember- Whatever the outcome, **your authentic presence** will changes lives!

WHAT QUESTIONS DO YOU HAVE?



Online Resources & Tips on Working With Victims:

How Prosecutors Are Responding to Victims of Crime:

- ▶ https://www.ncjrs.gov/ovc_archives/directions/pdf/txt/chap3.pdf

Effects of Victims' Experiences with Prosecutors on Victim Empowerment and Re-Occurrence of Intimate Partner Violence, Final Report:

- ▶ <https://www.ncjrs.gov/pdffiles1/nij/grants/202983.pdf>

Best Practices for Prosecutors in Interacting with Victims of Crime (Includes detailed recommendations regarding settlement and sentencing suggestions):

- ▶ <https://www.nsvrc.org/sites/default/files/publications/2018-09/Best%20Practices%20for%20Prosecution.pdf>

Practical Tips and Legal Strategies for Easing Victims' Concerns About Testifying:

- ▶ <https://law.lclark.edu/live/files/21751-practical-tips-and-legal-strategies-for-easing#:~:text=PRACTICAL%20TIPS%20AND%20LEGAL%20STRATEGIES%20FOR%20EASING%20VICTIMS%E2%80%99,the%20perpetrator%20since%20the%20crime%20occurred.%20The%20trial>

Vicarious Trauma - American Bar Association Link and link to research study:

- ▶ https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/#:~:text=Secondary%20traumatic%20stress%2C%20also%20known,exposed%20to%20someone%20else's%20trauma.
- ▶ <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1455&context=pilr>

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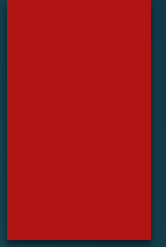
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Supplemental Slides




Notification & Conferring

- ▶ How Prosecutors Are Responding to Victims of Crime EH Holder Jr, DA General - 1996 - ncjrs.gov
- ▶ While prosecutors decline to file charges in many cases brought to them by law enforcement and others, it is often a difficult decision.
- ▶ For a victim, not knowing why the crime was not prosecuted makes their experience even more painful. It is good practice in all cases to confer with victims and survivors regarding filing decisions so they have a clear understanding of the status of the case.
- ▶ The prosecutor should explain the decision not to bring charges and advise the victim of other options they may have available to them, including in some cases filing a civil lawsuit.

Notification & Conferring

- ▶ Victims complain that delays and continuances are one of their primary frustrations.
- ▶ When continuances cannot be avoided, prosecutors should notify victims and witnesses as soon as possible to prevent inconvenience and costs such as child care, transportation, and time lost from work.
- ▶ In addition, procedures should be established to ensure that cases are continued to dates agreeable to victims and witnesses, and those dates should be secured in advance whenever possible. Reasons for continuances should be explained on the record.

- 
- ▶ Arguing that delays and continuances can result in the “unavailability of some witnesses and the fading memory of others,” the President’s Task Force recommended that prosecutors “vigorously oppose continuances except when they are necessary for the accomplishment of legitimate investigatory procedures or to accommodate the scheduling needs of victims.”
 - ▶ Case continuances prolong and intensify the victimization experience and related trauma. They are sometimes used as a defense tactic to discourage victims from participating in the system.

Notification & Conferring

- ▶ Because such a large percentage of felony cases are disposed of by plea agreements and sentencing is often negotiated as part of the plea agreement, it is essential for prosecutors to seek victim input before finalizing plea or sentencing agreements.
- ▶ While time constraints and overwhelming caseloads make it difficult for prosecutors to delay recommendations for sentences as part of plea agreements, in violent crimes prosecutors should request judges to postpone any recommendation for sentence until the victim is notified, consulted, and provided with an opportunity to submit an impact statement.

Notification & Conferring

- ▶ There are clearly times when the prosecutor cannot ethically abide by the victim's preferences.
- ▶ In these cases, prosecutors should not avoid conferring with victims, who will likely learn about the “lenient” plea and call the victim witness advocate to demand an explanation.
- ▶ A better technique is for the prosecutor or advocate to confer with victims beforehand and indicate at the end that a plea to a lesser crime may be accepted on “public policy” grounds, which can be described in writing in published prosecutorial guidelines.
- ▶ The prosecutor or advocate should then explain that one or more of those legitimate grounds will guide the final decision. Victims may be upset with such a partial explanation, but less so than having their right to consultation ignored.

Before Dismissing a Case:

- ▶ According to state court data, about one in five criminal cases is resolved by a prosecutorial decision not to continue or by a court ruling to drop the charges.
- ▶ It is critical that victims have a voice before such a momentous decision is made final. Victims have a vital interest in knowing what is happening with the prosecution of the person charged with the crime against them.
- ▶ It is particularly important for sexual assault victims to have a voice before the important decision of not moving forward with a case is finalized.
- ▶ Speaking with these victims before making a filing decision also benefits the prosecutor by providing another opportunity to evaluate victim credibility. In some cases, prosecutors may change their mind about declining to prosecute because they recognize that the victim will make a good witness.